

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

Communications Assistance for
Law Enforcement Act

CC Docket No. 97-213

COMMENTS OF CENTENNIAL CELLULAR CORP.

Centennial Cellular Corp. ("Centennial"), through counsel and pursuant to FCC Rule Sections 1.415 and 1.419, comments upon the pending requests for an extension of the October 25, 1998 compliance deadline set forth in the Communications Assistance for Law Enforcement Act ("CALEA"). On April 20, 1998, the Wireless Telecommunications Bureau's released a Public Notice which described pending petitions that seek various forms of relief from the requirements of CALEA.¹ Comments pertaining to the issue of extension of the CALEA compliance deadline are to be filed by May 8, 1998.

As explained below, Centennial urges the Commission to immediately establish a blanket extension of the CALEA compliance deadline until at least October 24, 2000 because CALEA-compliant hardware and software will not be available within the

¹In the Matter of: Communications Assistance for Law Enforcement Act, CC Docket No. 97-213, Public Notice, DA 98-762, released April 20, 1998 (hereinafter the "Bureau Notice").

compliance period. Providing blanket relief to all affected carriers will preclude the need for hundreds of individually affected companies to file duplicative petitions with the Commission seeking relief because compliance with CALEA by the October 25, 1998 deadline is beyond their control. Such duplicative efforts by industry and the FCC, who must process and rule on such petitions, is unnecessary and a great waste of valuable resources for the carriers and the Commission alike. In this regard, Centennial and several other parties have already filed extension petitions with the Commission, and the Commission can expect many more if prompt relief is not forthcoming.²

I. Background.

The Bureau Notice summarizes the heart of the problem confronting Centennial and other carriers that are faced with the October 25, 1998 compliance deadline. CALEA establishes general requirements concerning the capability of equipment, facilities and services of telecommunications carriers to provide surveillance assistance to law enforcement. CALEA provides a safe harbor if covered carriers comply with publicly available technical standards. The absence of an accepted standard does not excuse compliance with CALEA, however, failure to comply with CALEA requirements subjects telecommunications carriers to penalties of \$10,000 per day.

The law anticipated that the specific CALEA compliant standards would be worked out on a timely basis between the industry and the law enforcement interests.

²Centennial filed its Petition For Extension of Compliance Date on behalf of its CMRS subsidiaries on May 6, 1998 (hereinafter "Centennial Petition"). A copy of the Petition is attached as Exhibit A.

Unfortunately, those parties have been unable to reach agreement on numerous critical capabilities, as well as other matters such as the scope of grandfathered systems that are entitled to be reimbursed by the government for implementing CALEA. As summarized in the Bureau Notice and Centennial's Petition, the industry standard that affected carriers had hoped to rely on as a safe harbor is now under attack as deficient for providing excessive surveillance capabilities, on the one hand, and being too restrictive on the other. Obviously, this leaves affected carriers with no safe harbor at all and no way to comply with the law until the FCC resolves the issue as it has been requested to do.

II. Recommended Actions.

The Bureau Notice specifically requests comments concerning the possible actions the Commission might take, "including the issuance of an extension order that applies to all carriers subject to the compliance deadline, to ensure that the objectives and obligations of CALEA are met in the most timely manner".³ In addition, the Commission requests suggestions for how it could "streamline the process for granting extensions", presumably if the Commission decides to proceed on a case by case basis.

Given the fact that there is no CALEA standard that telecommunications carriers can rely on, and that the FCC now has the responsibility of establishing the capabilities that CALEA is deemed to require, there does not appear to be any rationale basis for the Commission to delay in granting a blanket extension to all affected carriers with respect to the October 25, 1998 compliance deadline. The extension petitions that have been

³Bureau Notice at 4.

filed with the Commission, as described in the Bureau Notice, and Centennial's Petition, establish that the Commission should provide the maximum extension provided for by Section 107 of CALEA, that is until October 24, 2000. This simply recognizes that the lead time for equipment manufacturers to implement new hardware and software capabilities is at least two years once standards have been established. Given the current impasse with respect to standards, it will be at least two years after the FCC resolves the capabilities conflict before compliant hardware and software will be commercially available to affected carriers.⁴

The fact that it is now infeasible for the industry to comply with CALEA by October 25, 1998 is not reasonably disputed by anyone. Consequently, there is no reason for the Commission to delay further in extending the deadline or from providing such an extension on an industry wide basis. Additional delay will unnecessarily cause carriers to undergo the expense of requesting individual relief from the Commission. The Commission will needlessly expend scarce resources on processing and reviewing largely duplicative petitions. Moreover, given the substantial penalties involved for non-compliance with CALEA (\$10,000 per day), carriers are understandably concerned about the possibility of incurring such liability as long as the possibility exists that the Commission will for some reason not provide the requested relief, or will not act on individual extension petitions prior to the compliance deadline.

⁴Depending on the timing of the FCC's decision determining CALEA capabilities, it may be necessary for the FCC to provide additional time beyond October 24, 2000 to provide reasonable time for compliant equipment and software to become commercially available.

III. Conclusion.

For the reasons discussed above and in the Centennial Petition, the Commission should promptly grant an industry wide extension of the October 25, 1998 CALEA compliance deadline until October 24, 2000.

Respectfully submitted,

CENTENNIAL CELLULAR CORP.

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May 8, 1998

EXHIBIT A

STAMP & RETURN

Before the
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Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Petition for the Extension of the
Compliance Date under Section 107 of the
Communications Assistance for Law
Enforcement Act by Centennial Cellular
Corp. and its CMRS Subsidiaries

PETITION FOR EXTENSION OF COMPLIANCE DATE

Centennial Cellular Corp., together with its direct and indirect Commercial Mobile Radio Service subsidiaries¹ (collectively referred to herein as "Centennial"), through its attorneys and pursuant to Section 107(c) of the Communications Assistance for Law Enforcement Act ("CALEA"), 47 U.S.C. §§ 1001 et seq., seek an extension of CALEA's October 25, 1998, compliance date to at least October 24, 2000, because CALEA-compliant hardware and software will not be available within the compliance period.

¹The following Centennial subsidiaries hold PCS and cellular licenses: Centennial Wireless PCS License Corp., Alexandria Cellular License Corp., Century Yuma Cellular Corp., Michiana Metronet, Inc., Bauce Communications of Beaumont, Inc. Centennial Benton Harbor Cellular Corp., Century El Centro Cellular Corp., Elkhart Metronet, Inc., Centennial Cellular Tri-State Operating Partnership, Mega Comm LLC, Century Indiana Cellular Corp., Centennial Randolph Cellular LLC, Centennial Jackson Cellular Corp., Lafayette Cellular Telephone Company, Centennial Morehouse Cellular LLC, Centennial De Soto Cellular Corp., Centennial Caldwell Cellular Corp., Centennial Beauregard Cellular LLC, Iberia Cellular Telephone Company LLC, Centennial Hammond Cellular LLC, Centennial Michigan RSA 6 Cellular Corp., Centennial Michigan RSA 7 Cellular Corp., Century Michigan Cellular Corp., Centennial Claiborne Cellular Corp., South Bend Metronet, Inc.

I. BACKGROUND

A. Petitioner

Centennial provides broadband Personal Communications Services ("PCS") in Puerto Rico, and cellular radio services in eight states. Specifically, Centennial is the B Block PCS licensee for the Puerto Rico MTA and has provided broadband PCS service in Puerto Rico since December 1996. In addition, Centennial provides cellular services in Arizona, California, Indiana, Louisiana, Michigan, Mississippi, Ohio and Texas. As a result, Centennial is a "telecommunications carrier" as that term is defined in Section 102(8) of CALEA. 47 U.S.C. §1001(8)(B)(i).²

B. CALEA Requirements

CALEA requires telecommunications carriers to ensure that their equipment, facilities and services deployed or installed, or that have been significantly upgraded or modified, after January 1, 1995, will meet assistance capability requirements that enable law enforcement to conduct authorized surveillance.³ In this regard, CALEA provides a "safe harbor" for a covered telecommunications carrier to the extent it complies with publicly

²Section 1001(8)(B)(i) provides that a telecommunications carrier includes "a person or entity engaged in providing commercial mobile radio service (as defined in section 332(d) of this title)".

³47 U.S.C. §§1002(a), 1007(c)(3)(B). Any equipment installed or deployed prior to January 1, 1995 is considered to comply with CALEA unless the Attorney General agrees to reimburse carriers for the cost of modifying that equipment to provide additional capabilities, or unless such equipment has been "replaced or significantly upgraded or otherwise undergoes major modification" after January 1, 1995. 47 U.S.C. §1008(b), (c). As noted below, definitions of key terms such as "deployed and installed", "significant upgrade" and "major modification" are subject to sharply different interpretations, again leaving carriers like Centennial without clear guidance with respect to their obligations, even assuming compliant equipment were available.

available standards adopted by an industry association or a standard-setting organization.⁴ However, the absence of a standard does not relieve telecommunications carriers from their obligations to comply with the capability requirements of CALEA.⁵ The effective date for compliance with these capability requirements is October 25, 1998, absent the extension of the deadline by the FCC.⁶ As explained below, the recent submission to the FCC of countervailing deficiency petitions, one claiming the interim standard provides inadequate surveillance capabilities and the other asserting that the standard provides excessive capabilities, has placed Centennial and other telecommunications carriers in the untenable position of having no safe harbor at all in the storm of controversy surrounding what capabilities CALEA requires and what systems are subject to such requirements.

C. The Interim Standard

In its Public Notice released on April 20, 1998 the Commission summarized the status of the proceedings affecting the implementation of the capabilities required by CALEA.⁷ The Notice explained that an interim industry standard (J-STD-025) was announced by the Telecommunications Industry Association ("TIA") and Committee T1 on December 5, 1997 to allow telecommunications carriers to comply with CALEA obligations. However, on March 27, 1998, the FBI and Department of Justice ("DOJ") jointly challenged the interim standard as "deficient" by filing a petition with the Commission under Section

⁴47 U.S.C. §1006(a).

⁵*Id.* at §(a)(3)(B).

⁶47 U.S.C. §1001 note (b).

⁷*In the Matter of Communications Assistance for Law Enforcement Act*, CC Docket No. 97-213, DA 98-762, released April 20, 1998 (the "April 20 Notice").

107(b). The FBI position is that the standard does not provide sufficient enhanced surveillance capability. On the other hand, the Center for Democracy and Technology ("CDT") filed a deficiency petition on March 26, 1998, claiming that the interim standard provides excessive surveillance capabilities and does not adequately protect the privacy of communications.

On April 2, 1998, the Telecommunications Industry Association ("TIA") filed a rulemaking petition requesting that the Commission resolve the dispute over the interim standard and to suspend the enforcement of CALEA until the dispute is resolved.⁸ TIA also requested, inter alia, that the FCC provide telecommunications carriers and equipment manufacturers at least 24 months to implement the Commission's decision.⁹

II. Legal Argument

A. CALEA Extension Procedures

CALEA provides that a telecommunications carrier that is proposing to install or deploy any equipment prior to October 25, 1998 can seek an extension from the FCC regarding the CALEA capability requirements, and that the FCC will grant the extension if it finds that compliance with the requirements is not "reasonably achievable through application

⁸In the Matter of Rulemaking Under Section 1006 of the Communications Act of 1934, as Amended, and Section 107 of the Communications Assistance for Law Enforcement Act to Resolve Technical Issues and Establish a New Compliance Schedule, TIA Petition for Rulemaking filed April 2, 1997.

⁹See also Petition For Extension of Compliance Date, filed jointly by AT&T Wireless Services, Inc., Lucent Technologies, Inc. and Ericsson, Inc. on March 30, 1998 (seeking extension of the CALEA compliance deadline until October 24, 2000) (the "AT&T Joint Petition"); United States Telephone Association Petition for Extension of Compliance Date, filed April 24, 1998 (seeking a two year extension of the October 25, 1998 compliance date).

of technology available within the compliance period".¹⁰ In its Notice of Proposed Rulemaking regarding CALEA, the Commission stated that October 24, 1998 is the last day by which an extension may be sought and that the Commission may grant an extension of time until October 24, 2000.¹¹ The Commission did not propose specific rules for submitting requests, but proposed to permit carriers to petition the Commission for an extension on the basis of criteria specified in Section 109 to determine whether it is reasonably achievable for the petitioning carrier to comply.¹² In its April 20 Notice the FCC sought comment on the various pending petitions and specifically requested comment on the issues raised concerning compliance with CALEA obligations, "including any extension of the October 1998 compliance date."¹³ Although Centennial intends to file comments in response to the April 20 Notice, due to the uncertainty concerning the timing and outcome in that proceeding, Centennial seeks individual relief through this Petition.

As a telecommunications carrier covered by CALEA, it appears that some of Centennial's equipment may need to be made CALEA compliant without reimbursement from the FBI. Centennial's subsidiaries operate cellular systems with equipment in place prior to January 1, 1995, some of which has undergone upgrade or modification since January 1, 1995. In addition, Centennial's PCS system serving Puerto Rico commenced service in

¹⁰The Commission must consult with the Attorney General in making this determination. 47 U.S.C. §1006(c).

¹¹ See In the Matter of Communications Assistance for Law Enforcement Act, Notice of Proposed Rulemaking, CC Docket No. 97-213, FCC 97-356, released October 10, 1997, ¶ 49.

¹² Id. ¶ 50.

¹³April 20 Notice at 4.

December 1996. However, as indicated in the AT&T Joint Petition, even the issue of what equipment must be made CALEA capable without government reimbursement is the subject of intense controversy,¹⁴ and Centennial does not at this stage concede that it has any responsibility to upgrade any equipment, services or facilities unless the FBI agrees to reimburse Centennial for the cost of such upgrades.¹⁵

B. Necessity for Extension

As previously noted, Section 107(c) provides that the FCC may extend the date for CALEA compliance, after consultation with the Attorney General, if it determines that "compliance with the assistance capability requirements under Section 103 is not reasonably achievable through application of technology available within the compliance period."¹⁶ Centennial's discussions with its equipment vendor, Lucent, confirms what AT&T, Lucent and

¹⁴See AT&T Joint Petition at 8. Although the AT&T Joint Petition challenges the FBI interpretation of "installed or deployed," it does not address the issue of what equipment has been "significantly upgraded or otherwise [undergone] major modification." Centennial notes that FCC clarification is also required here. For example, an upgrade or modification of a pre-January 1, 1995 system (even if arguably "significant" or "major") affecting components of the System that do not relate to surveillance capabilities would not negate the government's responsibility to reimburse the carrier to become CALEA compliant. Along these lines, the inclusion of a new billing system or software and equipment implementing E911 service would not constitute a "significant" or "major modification" for purposes of CALEA.

¹⁵Centennial also notes that on April 27, 1998, the Cellular Telecommunications Industry Association ("CTIA") and the Personal Communications Industry Association ("PCIA") jointly filed a Complaint for Declaratory and Injunctive Relief in federal district court in Washington, D.C., against both the DOJ and the FBI. Specifically, the CTIA/PCIA Complaint also challenges the FBI's definition of "installed or deployed", alleging that the FBI's definition attempts to shift the cost of CALEA compliance from the government to certain affected carriers.

¹⁶47 U.S.C. §1006(c).

Ericsson demonstrated in the AT&T Joint Petition.¹⁷ Specifically, because no clear industry standard now exists, and the FCC has been requested to establish CALEA capability requirements, the technology necessary for compliance is not commercially available. Moreover, equipment manufacturers now are unable to commit the substantial additional investment needed to produce equipment that conforms to the interim standard by the October 25, 1998 deadline since the viability of the interim standard is in question.¹⁸ As observed in the AT&T Joint Petition, should the FCC substantially modify the interim standard in response to the petitions, the ordinary development cycle for hardware and software is 24 months after promulgation of a standard.¹⁹ Thus, even after the FCC has resolved the pending controversy and specified the appropriate CALEA compliant capabilities, equipment able to deliver such capabilities will not be available for at least another 24 months. Accordingly, Centennial requests that the Commission grant the extension, effective October 25, 1998, for the full two-year period.²⁰

C. Tolling of CALEA Enforcement Provisions

Section 108 of CALEA permits the Attorney General to seek an order in federal district court to enforce CALEA. 47 U.S.C. § 1007. CALEA authorizes penalties of \$10,000 per day per violation. 18 U.S.C. § 2522. Moreover, the lack of an industry standard

¹⁷Centennial has consulted and cooperated on a timely basis with manufacturers of its telecommunications equipment and support services as required by CALEA. 47 U.S.C. §1005(a),(b).

¹⁸ See AT&T Joint Comments at 9-10.

¹⁹ See AT&T Joint Petition at 6 n.5.

²⁰Centennial reserves the right to seek additional time to comply with capability requirements established by the FCC, if appropriate. See 47 U.S.C. §1006(b)(5).

does not relieve Centennial from its obligations under CALEA, unless the Commission extends the compliance date as requested herein. 47 U.S.C. § 1006(a)(3)(B). Consequently, if the Commission fails to act on this petition by October 25, 1998, or otherwise provide the requested relief, Centennial could be subject to an enforcement action even though this extension petition was filed in good faith and as soon as Centennial's dilemma became apparent with the recent filing of the CDT and FBI/DOJ deficiency petitions.


To avoid such an unintended consequence, Centennial requests that the Commission expressly toll the CALEA compliance date during the pendency of this petition in the event that the Commission requires more than the remaining time in the compliance period to decide this matter. Further, if the petition is denied, Centennial requests that the Commission grant a reasonable period of time thereafter to permit Centennial to comply with the Commission's decision.

III. CONCLUSION

For all of the reasons set forth above, Centennial requests that the Commission grant a two-year extension of the CALEA compliance date to October 24, 2000, effective October 25, 1998.

Respectfully submitted,

CENTENNIAL CELLULAR CORP.
and its CMRS Subsidiaries²¹


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May 6, 1998

²¹Centennial's CMRS subsidiaries are listed in footnote 1, *supra*.

CERTIFICATE OF SERVICE

I, Sally Linzau, do hereby certify that a copy of the foregoing "Petition for Extension of Compliance Date", was mailed this 6th day of May, 1998, via first-class mail, postage prepaid, to the following:

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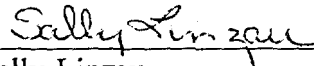
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May 6, 1998

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